February 16, 2000

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REPORT AND DECISION ON APPEAL OF SCHOOL IMPACT MITIGATION FEE

SUBJECT: Department of Development and Environmental Services File No. **B97C0300**

WELLINGTON RIVER HOLLOW
Appeal of School Impact Mitigation Fee

Location: McKenzie Place Apartments (aka Wellington River Hollow)
8700 Northeast Bothell Way

Appellant: Wellington River Hollow, LLC *represented by*
Attn: James Summers,
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Bothell, WA 98011-8200

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SUMMARY OF RECOMMENDATIONS:

Department's Preliminary Recommendation:	Deny the appeal
Department's Final Recommendation:	Deny the appeal
Examiner's Decision:	Grant in part and deny in part

PRELIMINARY MATTERS:

Notice of Appeal and Amended Appeal filed:	May 17, 1999
Petition to Intervene filed:	July 23, 1999

EXAMINER PROCEEDINGS:

Hearing Opened:	January 18, 2000
Hearing Closed:	January 24, 2000

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

School impact fees

- Assessment timing
- Incorrect fee calculations
- Student generation factors
- Unusual circumstances affecting fee fairness

SUMMARY:

The school impact fee appeal is granted with respect to the issue of incorrect impact fee calculations, and a refund of the overpayment amount is ordered.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On May 17, 1999, Wellington River Hollow, LLC filed an appeal to the Hearing Examiner challenging a decision issued by the Department of Development and Environmental Services on May 4, 1999, refusing to lower a school impact fee assessment. Wellington River Hollow proposes to build 144 apartment units at 8700 Northeast Bothell Way. The original building permit application subject to this proceeding was filed on December 22, 1997. The project's site lies within the boundaries of the Northshore School District, and the multi-family school impact fee assessed by DDES for the project was $1,398 per unit based on the schedule in effect in 1997 when the original application was filed.

2. Owing to the complexity of the subject matter and the fact that the Wellington appeal represents the first serious challenge under County regulations to the school impact fee assessment mechanism, this proceeding involved a lengthy and elaborate prehearing process, including the admission of the Northshore School District as an intervenor. Much of the time expenditure related to the need for the Appellant to engage in discovery, which mainly comprised the production of documents describing the School District's capital facilities plans. In addition, an

ongoing struggle focused on the need to translate the Appellant's statement of issues, which was largely couched in terms of constitutional and statutory violations, into numerical values related to the County's school impact fee assessment formula cognizable within an administrative review process.

3. A prehearing order issued on August 17, 1999, boiled the Appellant's rhetoric down to five essential issues, three of which were dependant on further refinement by the Appellant to identify the specific numerical values under challenge. Some of the original issues identified within the prehearing order were eventually dismissed, with the final result that the parties went to hearing to consider the following questions:

   A. Does the building permit documentary record for the Appellant's project, as reviewed within the context of applicable legal principles, require the imposition of the 1999 school impact fee structure rather than those fees in effect for 1997?

   B. Was the 1997 impact fee applied to the Appellant incorrectly calculated because of the improper use of a composite multi-family student generation factor? and,

   C. Does the Appellant's reliance on impact fee information provided by Northshore School District personnel constitute unusual circumstances demonstrating that imposition of the standard impact fee for 1997 would be unfair or unjust?

4. The prehearing order concluded that the Hearing Examiner had no jurisdiction to entertain a facial challenge to the legality of the County's impact fee ordinance scheme. Nonetheless, the prehearing order recognized that "where a key regulatory term is vague, entirely absent or in conflict with another material provision, interpretation will be required". Further, when performing such necessary interpretation, "an administrative tribunal may rely on constitutional principles, statutory requirements or other applicable legal doctrines in providing construction that will carry out the intent of the ordinance and withstand legal challenge."

5. Statutory authority for the enactment by local jurisdiction of impact fee ordinances is found at RCW 82.02.050, *et. seq.* Although expressed in a number of different ways, the essential message of the statute is that impact fees "shall not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development" (RCW 82.02.050 3)(b)). KCC Chapter 21A.43, which governs the imposition by the County of school impact fees, follows the statutory model and adopts much of its terminology. Thus, the language quoted above from RCW 82.02.050 appears almost verbatim at KCC 21A.43.020.B.

6. The formula for calculating school impact fees is set out at Attachment A to Ordinance 10162. It requires each school district to compute a separate student generation rate for a single family and multi-family residential development. It recognizes school district costs for site acquisition and school and facilities construction based on the district's adopted capital facilities plan. Finally, it offsets school facilities costs with a tax payment credit based on anticipated tax contributions that the new development is expected to make based on historic levels of property assessments. The resultant sum is then divided in half to provide a developer discount.

7. At the time of the initial 1997 building permit application, Wellington River Hollow was not the owner of the project. According to James Summers, a former employee of Wellington River

Hollow, the firm acquired a purchase option on the site in July 1998 subsequent to negotiations and inquiries begun earlier in the spring. According to Mr. Summers, these included a telephone inquiry in June 1998 directed to Dan Vaught, Director of Capital Projects for the Northshore School District, in which Mr. Vaught related that the District was in the process of approving a $387 per unit multi-family impact fee for implementation in 1999. This new fee was formally enacted in December 1998, when the King County Council adopted Ordinance No. 13338 providing approval of the Northshore School District capital facilities plan and its impact fee structure.

Wellington's position is that it purchased the Bothell Way site in reliance upon the 1999 school impact fee structure described by Mr. Vaught to Mr. Summers. While Mr. Vaught did not contradict Mr. Summers' testimony, he stated that he was operating under the assumption that the Bothell Way apartment complex was a startup project for which no building permit applications had yet been submitted.

8. Although enacted for the benefit of local school districts, KCC Chapter 21A.4 provides that the annual school impact fees will be set by the County Council and assessed and collected by DDES. Regardless of what assessment date is deemed to govern, it is clear that the imposition of the fee and the determination of the applicable fee schedule is entirely geared to the King County development permit system. It is also clear that the development permit application data upon which the fee assessment is based is not information that is communicated to local school districts in the ordinary course of business. Finally, as indicated by the July 3, 1996, School Impact Fee 1995 Financial Report prepared by DDES, after impact fees are collected from developers by King County they are not transferred to the local school districts for whose benefit they are collected. Rather, they are disbursed directly to vendors supplying services to the school district pursuant to the district's instruction.

9. The details are somewhat unclear, but it appears that Wellington River Hollow employees may have talked to King County DDES about permit fees generally, although no one recalled specifically pursuing with DDES the matter of school impact fee assessments. The uncontradicted staff testimony was that there are DDES employees who specialize in dealing with impact fee questions, that referrals are routinely made to such employees by permit intake personnel, and that the telephone number of the School Impact Fee Coordinator is listed within the DDES printed bulletin describing the school impact fee assessment process. It is also uncontroverted that the first time Wellington River Hollow was actually aware of the amount of its school impact fee assessment was March 10, 1999, when it received from DDES a permit application action notice itemizing fees owed to DDES in seven categories. The total fee amount was in excess of $320,000, and $210,672 of that sum represented the school mitigation impact fee payment.

10. According to Note 1 to Attachment A of Ordinance 10162, the student generation factors that school districts use within the impact fee formula "are to be provided by the school district based on district records of average actual student generation rates for new developments constructed over a period of not more than five years prior to the date of the fee calculation." Within the last ten years the Northshore District has contracted with its consultants, Shockey Brent, Inc., on five occasions to produce student generation factors based on an actual inventory of new multi-family development within the District.

The overall student generation factor for any year is the sum of three separate factors that are calculated for kindergarten through sixth grade, seventh through ninth grades, and tenth through twelfth grades. In 1992 based on the Northshore District's 1991 capital facilities plan, the generation factors for multi-family development totaled 0.19. The next original survey was performed in 1994 for use within the 1995 impact fee calculation. Here the multi-family total was 0.25, with the components being 0.15 for K-6, 0.06 for 7th through 9th, and 0.04 for 10th through 12th grades. An original survey of multi-family development was also performed within the District in 1998 for use in 1999. By this time the composite total had fallen to 0.13, with the component factors being 0.08, 0.03., and 0.02. Finally, the total student generation factor as surveyed by Shockey Brent fell even further in 1999 for use in 2000. Here the survey results produced a total of 0.105, and component factors of 0.061, 0.025, and 0.019.

11. The 1996 Northshore Capital Facilities Plan that generated the data for the impact fee computation effective in 1997 did not use original district data to calculate its multi-family student generation factors. In that year Shockey Brent was also hired to perform the necessary original survey, but the consultants concluded that the number of newly constructed multi-family units within the District was not great enough to justify the exercise of calculating in-District multi-family student generation factors. As explained by the Shockey Brent report attached to the 1996 plan, "only five developments, yielding 250 occupied units, qualify for the study", which led the consultants to conclude that "there was not enough qualifying multi-family development to perform accurate calculations." As elaborated by Reid Shockey in his hearing testimony, the consultants did not feel that such a small data set would be demographically valid and yield a student factor calculation that would be adequately representative of the composition of the district as a whole.

12. The narrative within the 1996 Shockey Brent student generation rate study also suggested that in the absence of an adequate data base within the District itself, "rates from surrounding, similar districts should be used for this time period."

    In actuality, however, data from surrounding similar districts was not employed to generate the multi-family student generation factors for the 1996 Northshore CFP. Later in the student generation study within an Appendix C that appears to have been written after the main narrative, the Shockey Brent report discloses that the multi-family student factors actually used were "a composite (average) of the factors of the other districts in King County that developed their own numbers." These other districts employing original studies were Federal Way, Issaquah, Kent, and Lake Washington, with the resultant total student factors ranging from a high of 0.376 for Kent to a low of 0.144 for the Lake Washington District. These four original studies together produced a composite average of 0.266, and individual component factors of 0.165 for kindergarten through 6th grade, 0.055 for seventh through ninth grades, and 0.046 for tenth through twelfth grades. These borrowed composite student generation factors, when run through the impact fee formula along with the other required variables, produced a per unit multi-family student impact fee of $1,398 for use in 1997 within the Northshore School District.

13. Note 1 to Attachment A of Ordinance 10162 authorizes the use of data other than the average actual student generation rates for new developments constructed within a district over the previous five years when "such information is not available in the district." Under those circumstances, "data from adjacent districts, districts with similar demographics, or county-wide averages must be used." DDES and the Northshore School District defend the use of original

data from the four other districts identified as having conducted actual multi-family surveys in 1996 on the basis that such information comprises a county-wide average permitted under the ordinance.

14. It appears that neither the Northshore School District consultants nor the County's School Technical Review Committee charged by ordinance with the responsibility of reviewing each school district's capital facilities plan made any attempt in 1996 to assess the adequacy or reliability of the county-wide average employed by Northshore and the three other County school districts that opted not to perform actual multi-family surveys. At the appeal hearing both the District and DDES argued retrospectively that use of the 1996 county-wide average was defensible. DDES also suggested that regardless of its flaws, this composite number is the best that the system is realistically capable of producing. Although there are 20 school districts in King County, only 11 participate in the County impact fee program, with those districts lying entirely within incorporated urban areas categorically excluded from the program. Further, Ms. Heavey testified that the four districts performing surveys in 1996 had compiled data sets based on new multi-family units each totaling at least twice the 250-unit count deemed by Mr. Shockey to be inadequate to support a valid original survey for the Northshore District.

15. The Northshore School District's decision in 1996 to use a composite average of four other districts' data for the computation of its student general factor was criticized by the Appellant's technical consultant, Tom Heller. Discerning no rationale supporting rejection of an original Northshore data analysis other than Mr. Shockey's feelings, Mr. Heller contended that a survey of 100% of new development within the District for the prior five years would be superior to a nonrepresentative sampling of data generated by only four other districts. He also argued that if substitute data from another district were to be used, the logical choice would be the adjacent Lake Washington District, which would be more demographically similar to Northshore than Kent or Federal Way located at the south end of the County.

16. According to Ms. Heavey, neither DDES nor any individual district has ever attempted a comparative demographic survey of school districts within the County. Among the barriers to doing such studies based on currently available data are a lack of adequate information distinguishing single from multi-bedroom units, apartments from condominiums, and big apartment complexes from smaller facilities. In addition, demographic adjustments would need to be made between rural and urban areas and incorporated and unincorporated jurisdictions. In like manner, any attempt by the Northshore School District to assemble an average for all other districts that border Northshore would be frustrated by the fact that at least two of the districts, Shoreline and Bellevue, do not participate in the impact fee system.

17. Mr. Heller introduced no demographic studies to support his position that the best available choice would have been for Northshore to adopt in 1996 the student factors generated by the adjacent Lake Washington District. Nonetheless, his argument has a certain intuitive merit. First, under the ordinance adjacency, *per se*, is considered a positive indicator based on the assumption that physical contiguity will assure at least some degree of demographic similarity. In this instance, that assumption would appear to be warranted, in that the Northshore and Lake Washington Districts are geographically parallel entities that share approximately 13 miles of common boundary running from the shores of Lake Washington east through suburban areas to the western edge of the Snoqualmie Valley.

18. Finally, the appeal hearing produced some discussion regarding the relative weight of student generation factors in the production of impact fees via the fee formula. There are three major variables within the impact fee formula: the student generation factors, the per unit cost of school facilities, and a per unit tax credit which offsets the cost side of the equation. In 1997, the impact fee year at issue, the sum of $1,398 represented the highest level of assessment imposed on multi-family development within the Northshore School District during the period of 1995 through 2000. As emphasized by the Appellant, the multi-family impact fee for Northshore has fallen from its 1997 high to a low of zero for year 2000.

19. As it turns out, the 1996 CFP calculations that generated the 1997 multi-family impact fee for the Northshore District were extreme in all dimensions. Not only was the 0.266 composite student generation factor the largest used within the six-year period, but $4,078 per unit was also the highest cost factor for the period, while the tax credit of $482 was the lowest offset. By way of comparison, the 1995 fee was based on a total student generation factor of 0.25, which is only slightly less than that employed for 1997, yet the impact fee for that year was only $743, due to a very high tax credit of $1,980 and a lower per unit facilities cost of $3,467. The zero impact fee for year 2000 derives from the fact that construction costs per unit have fallen so low that they are entirely exceeded by the tax credit, and therefore the student factor of 0.105 is rendered ineffective.

CONCLUSIONS:

1. KCC 21A.43.050.D provides that for multi-family development, "the total amount of the impact fees shall be assessed and collected from the applicant when the building permit is issued, using the impact fee schedules in effect at the time of permit application." KCC 20.20.040.A provides that a Type 1 land use permit application "shall be considered complete as of the date of submittal upon determination by the department that the materials submitted meet the requirements" listed in the section. KCC 20.20.050.B states that an application "shall be deemed complete under this section if the department does not provide written notice to the applicant that the application is incomplete within the 28-day period as provided herein."

2. A building permit application results in a Type 1 decision. It is uncontested that B97C0300 was initially submitted on December 22, 1997. In the absence of any evidence of a notice of incompleteness having been issued by DDES, the unavoidable conclusion supported by all the permit records is that December 22, 1997, was the project application date for purposes of determining the applicable school impact fee. Accordingly, the 1997 impact fee for the Northshore School District applies to the property.

3. The Appellant's argument that the recently decided Court of Appeals case of New Castle Investments v City of LaCenter, Cause No. 23954-0-II (1999), requires a different outcome with respect to determination of the project application date for school impact fees calculation is unpersuasive. While the New Castle case contains a rather wide ranging discussion on a variety of issues, the Court's holding was simply that impact fees are not land use controls within the meaning of RCW 58.17.033, which is the statutory provision governing the vesting of subdivision applications. Since the Wellington River Hollow project does not involve a subdivision application, the New Castle case has no direct bearing on this appeal. The County ordinance explicitly provides that school impact fees for multi-family apartment complexes are

to be determined with reference to the date of application, and the New Castle case provides no basis upon which to question the legality of this ordinance provision.

4. KCC 21A.43.070.E authorizes the Hearing Examiner via the appeal process to adjust an impact fee assessment if unusual circumstances demonstrate that application of the standard impact fee to a particular development would be unfair or unjust. In briefing their arguments concerning this rather open-ended standard, all parties have focused on the question of whether the Appellant's reliance on fee information received from the Northshore School District was reasonable under the circumstances. We concur that this is the critical issue to be determined and conclude that it was not reasonable for Wellington River Hollow to rely on the representations of Mr. Vaught as being conclusive regarding the impact fee assessment applicable to Wellington's project.

5. While the relationship between a school district and the County within the school impact fee process is necessarily a close one, the roles of the two agencies are clearly distinct. Although the school district provides the data to be fed into the impact fee formula, all actions related to the actual imposition and collection of a fee are under County authority. The County authorizes the fee, calculates it, informs the Applicant of the sum due, collects the fee payment and disburses the funds. Therefore, any individual concerned with any aspect of the fee imposition or collection process, and performing even a cursory investigation of the procedures involved, would necessarily conclude that DDES was the responsible agency to be contacted for relevant fee information.

6. The logic of this conclusion is underscored by the fact that both the determination and the collection of the impact fee is synchronized with the County's land use permit process, a matter which is completely separate from and unrelated to normal school district operations. While one may perhaps argue about which event within the County's permitting process should trigger what impact fee consequences, there can be no doubt whatever that the potentially relevant events are all matters under County jurisdiction. We can discover no rational basis for a developer to believe that a school district would be privy to the County permitting information critical to the impact fee determination, and Wellington's expectation that Mr. Vaught would have such County information at his fingertips cannot be regarded as reasonable.

7. The second prong of the impact fee adjustment procedure authorized at KCC 21A.43.070.E permits a fee alteration if a developer demonstrates that an impact fee assessment was incorrectly calculated. After a number of false starts, the Appellant's position on this issue has resolved into the question of whether the 1997 impact fee applied to the Appellant's project was incorrectly calculated because the Northshore District in its 1996 Capital Facilities Plan improperly used a composite multi-family student generation factor based on data generated outside the District. We conclude that the Appellant is entitled to prevail on this issue.

8. As previously discussed, Note 1 of Attachment A to Ordinance 10162 is the only provision within the County's impact fee ordinance scheme that offers specific instruction concerning how student factors are to be calculated by school districts. Its priority preference is for a calculation based on "district records of average actual student generation rates for new developments

constructed over a period of not more than five years prior to the date of fee calculation"; in this category it supplies sufficient detail to provide school districts with adequate information as to how to proceed. It is our view that any school district that computes accurately a student factor based on a complete five-year set of the original in-district data described in Note 1 would have an unassailable defense within this administrative proceeding against an allegation of incorrect fee calculation.

9. The second part of Note 1 authorizes an alternative student factor calculation process if the necessary original data "is not available in the district". While this formulation hints at the possibility of some objective standard of data availability, in reality it refers to nothing more than the fact that a particular district in any given year has chosen for whatever reason not to perform an original study. Accordingly, we decline to review the rationale for Mr. Shockley's determination that in 1996 an insufficient data base existed for the computation of a representative student factor for the Northshore District.

10. Once a district has determined that the original in-district data necessary for calculation of a student factor is "not available" for any year, it is directed by Note 1 to generate an alternative student factor based on "data from adjacent districts, districts with similar demographics, or county-wide averages." A fundamental weakness of the ordinance scheme clearly is that this listing of alternative factors does not provide enough detail for a district to know exactly how to proceed.

11. In such circumstances, it is both reasonable and necessary to interpret this sparse language within the context of the purposes of the impact fee ordinance and its enabling legislation. Thus, KCC 21A.43.020.B, in describing the impact fee program elements, requires (following the statutory scheme) that "any impact fee imposed shall be reasonably related to the impact caused by the development and shall not exceed a proportionate share of the cost of system improvements that are reasonably related to the development."

12. Looking at the alternative sources listed in Note 1 within the context of the underlying policy quoted above, the unifying theme must be that the alternative data - whether derived from an adjacent district, districts with similar demographics, or county-wide averages - must be grounded in an analysis that demonstrates that the borrowed information is reliably and reasonably related to the district in question. If there are no grounds to conclude that the substituted information is comparable to that which would be generated in the district itself if the requisite original studies were performed, then the use of that substitute information to determine an impact fee may not provide the proportionality between the development's impact and the fee level that is necessary to comply with the fundamental policy standard.

13. The category that embodies most of the elements of rational comparability between a district and a general average is the concept of demographics. If the substitute data used by a district is comparable in the areas of age distribution, income level, occupational status, and family size, then we may conclude with some level of comfort that the substitute data will fairly reflect the information that might have been generated for the borrowing district if its own data survey had been performed.

A related consideration underlying an analysis of the acceptability of substitute data on student generation factors for multi-family housing involves the composition of the data by housing unit type. The distribution within the borrowed data between single bedroom and multi-bedroom units and between rental apartments and condominiums under fee ownership ought to be generally comparable to the user district for the comparison to be valid.

14. Based on the foregoing discussion, our view of the list of alternative sources provided in Note 1 is that their selection by a district ought not be rigidly formalistic but rather responsive to an intelligent analysis as to the specific data's reliability and comparability. Thus, we believe it is possible for a district to conclude consistent with the requirements of the ordinance that a complete data set from a nearby district that is demographically comparable should be preferred to an average of adjacent districts where many of those adjacent districts are demographically different. Our interpretation of the roster of acceptable sources external to the district is that it sets the limits on the kinds of data that can be used but does not dictate how the use shall occur. If a valid demographic and housing type comparison can be established, it should not be a fatal objection to the imported data that it represents some but not all adjacent districts or some but not all districts with similar demographics. In like manner, since a county-wide average will be based necessarily on something less than an exhaustive survey of all new housing units within the County for the previous five-year period, the critical concern is that there be some rational basis for determining that the average used is fairly representative of the district to which it is being applied.

15. The fundamental objection to the use of the so-called county-wide average employed in 1996 by Northshore and three other school districts in lieu of original counts is not that the size of the data sample was too small. Rather, the objection is that this average is an accidental number based on the data generated by whichever districts happened to decide to do an original study in that year. While one may conjure up after-the-fact reasons why these districts may or may not be comparable to Northshore, ultimately this is mere speculation. The record provides no information as to what these numbers represent actually and (with the possible exception of Lake Washington) whether the districts averaged bear any rational comparison demographically to the Northshore District.

16. In view of the accidental and arbitrary character of this ersatz county-wide average, it also does not qualify for the presumption of validity accorded on review to the "district's data" under KCC 21A.43.070.F. For borrowed data to merit such deference, it must undergo the analysis necessary to demonstrate that it meets the reasonable relationship and proportionate share tests stated at KCC 21A.43.020.B. Once the borrowed data has been affirmatively linked to the district's context, then it qualifies for deferential treatment. Accordingly, the standard of proof that must be met in this proceeding by the Appellant is to demonstrate the existence of an incorrect fee calculation by a preponderance of the evidence. The Appellant has satisfied this requirement.

17. While we would hazard a guess that the use of the 1996 four-district average was likely more appropriate for Northshore than it was for the rural districts of Riverview and Snoqualmie Valley, our ultimate conclusion must be that this data does not assure the production of a Northshore impact fee reasonably related to the impacts caused by the new multi-family residential development proposed by Wellington River Hollow. As such, it cannot rationally support a conclusion that the 1997 impact fee will not exceed a proportionate share of the cost of

system improvements that are reasonably related to the Wellington River Hollow development. The raw, unanalyzed data borrowed from the four districts in question cannot in any meaningful sense be regarded as a county-wide average meeting the requirements of the ordinance. Its use is also at odds with the basic methodological conclusion of the 1996 Shockey Brent report that substitute data for the Northshore District should be derived from "surrounding, similar districts."

18. Having concluded that the 1996 substitute data used by the Northshore District for computation of its multi-family school generation factors does not qualify under the impact fee ordinance as a county-wide average, we turn to the question of what figures should replace this data in the computation of the Northshore 1997 impact fee. While we must admit that information defining a superior basis for a student generation factor cannot be obtained solely from the 1996 data in the hearing record, we have the advantage of hindsight that allows us to effect a reasonably satisfactory solution to the problem.

    The hearing record disclosed that the Northshore District performed actual count multi-family residential surveys in 1994 two years before the 1996 CFP, and then again two years after in 1998. Since both the 1994 and 1998 studies presumably reflect five prior years of housing data, taken together they supply a data base spanning from 1989 through 1997, with the 1993 data year being duplicated in both reports. Averaging the 1994 and 1998 student factors, one derives a kindergarten through sixth grade factor of 0.115, a factor of 0.045 for seventh through ninth grades, and a factor of 0.03 for tenth through twelfth grades.

19. Looking to 1996 specifically, it is also reasonable to conclude that the original survey information generated in that year most directly comparable to Northshore's demographic context was the data for the Lake Washington District. While no specific demographic analysis of the two districts has been performed, intuitive comparisons based on adjacency are sufficiently compelling to regard the Lake Washington data as relatively more reliable than any of the other original studies done in 1996.

20. Our conclusion is, therefore, that reasonable figures to use for computation of the 1997 Northshore multi-family impact fee would be student generation factors derived from averaging the 1994/1998 composite Northshore figures described in the previous conclusion with the student factors derived by the Lake Washington District for its 1996 CFP. When these averages are calculated, the results are student factors of 0.098 for the kindergarten through sixth grade range, 0.0395 for seventh through ninth grades, and 0.0295 for tenth through twelfth grades. Plugging these student factors into the County's impact fee formula using the cost and credit values contained within the 1996 Northshore CFP, and turning the crank, the result is a multi-family impact fee of $668 per unit. Since this figure is less than 50% of $1398, it also meets the curious requirement of KCC 21A.43.070.E that the fee formula error not be subject to correction unless it exceeds the developer discount.

DECISION:

The Wellington River Hollow, LLC school impact fee appeal is GRANTED with respect to the issue of whether the 1997 Northshore fee was incorrectly calculated due to the improper use of a composite multi-family student generation factor, and is DENIED in all other respects.

ORDER:

King County Department of Development and Environmental Services shall recalculate the 1997 school impact fee total owed by Wellington River Hollow using a multi-family fee of $668 per unit and shall refund the amount overpaid to the Appellant.

ORDERED this 16th day of February, 2000.

_____

Stafford L. Smith, Deputy
King County Hearing Examiner

TRANSMITTED this 16th day of February, 2000, to the following parties and interested persons:

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Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding conditional use permit application appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE JANUARY 18 AND 24, 2000, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. B97C0300 – WELLINGTON RIVER HOLLOW.

Stafford L. Smith was the Hearing Examiner in this proceeding. Participating at the hearing were Barbara Heavey and Steve Broz, representing the County; Terry Brunner, James Summers, James Klauser, Brian Knox, Robert Rowley, Joshua Loman, Tom Heller, Reid H. Shockey, and Dan Vaught.

The following exhibits were offered and entered into the hearing record:

Exhibit No. 1 Report to the Hearing Examiner, Wellington River Hollow File No. B97C0300
Exhibit No. 2 Letter dated May 4, 1999, from Greg Kipp (Director, DDES) to James J. Klauser
Exhibit No. 3 Letter dated April 1, 1999, from James Klauser to Greg Kipp appealing school impact fee
Exhibit No. 4 Letter dated April 16, 1999, from James Klauser to Greg Kipp re Appeal/Reconsideration of School Impact Fee
Exhibit No. 5 Notice of Land Use Appeal of DDES Director's May 4, 1999, Decision with attached Amended Notice of Appeal and Appeal Statement dated May 17, 1999
Exhibit No. 6 King County Ordinance 12532
Exhibit No. 7 Capital Facilities Plan – 1996
Exhibit No. 8 King County SIERRA Permit System Base screen and Project Comment screen for B97C0300
Exhibit No. 9 Formula for Determining School Impact Fees
Exhibit No. 10 School Impact Fee Student Generation Factors (Same as Exhibit No. 22)
Exhibit No. 11 Northshore School District map ***(A-1)***[*]
Exhibit No. 12 Chapter 21A.43 Impact Fees ***(A-2)***
Exhibit No. 13 King County Ordinance 12532 ***(A-3)***
Exhibit No. 14 King County Ordinance 13338 ***(A-4)***
Exhibit No. 15 Capital Facilities Plan – 1994 ***(A-5)***
Exhibit No. 16 Capital Facilities Plan – 1995 ***(A-6)***
Exhibit No. 17 Capital Facilities Plan – 1996 ***(A-7)***
Exhibit No. 18 Capital Facilities Plan – 1997 ***(A-8)***
Exhibit No. 19 Capital Facilities Plan – 1998 ***(A-9)***
Exhibit No. 20 Capital Facilities Plan –1999 ***(A-10)***
Exhibit No. 21 New Housing Units Constructed in District 1989-1999 ***(A-11)***
Exhibit No. 22 School Impact Fee Student Generation Factors (Same as Ex. No. 10) ***(A-12)***
Exhibit No. 23 Northshore School District Board Policy No. 3130 (Student Attendance Areas) and No. 3131 (Student Attendance Area Transfers) ***(A-13)***
Exhibit No. 24 Permit Application Action Notice ***(A-14)***
Exhibit No. 25 King County Construction Permit (issued April 5, 1999) ***(A-15)***
Exhibit No. 26 Resume of Dan Vaught ***(A-16)***

[*] Appellant's exhibit numbers

Exhibit No. 27 Shockey Brent, Inc. Firm Experience and personal resume of Reid H. Shockey ***(A-17)***
Exhibit No. 28 Washington State Growth Management Program Guide to Impact Fees January 1992 ***(A-18)***
Exhibit No. 29 Resume of Thomas A. Heller ***(A-19)***

The following exhibits were offered and entered into the hearing record January 24, 2000:

Exhibit No. 30 Printed screens of permits relating to B97C0300
Exhibit No. 31 Letter dated July 3, 1996, from King County Executive Gary Locke to Jane Hague, Council Chair, with attached School Impact Fees: 1995 Financial Report

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